

CNE.3030R1C9

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Desnoyers et al.
Appl. No. : 10/036,150
Filed : December 26, 2001
For : PRO4405 NUCLEIC ACIDS
Examiner : Robert Clinton Hayes
Group Art Unit : 1649

**APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705**

United States Patent and Trademark Office
P.O. Box 2327
Arlington, Virginia 22202

Dear Sir:

Applicant respectfully requests reconsideration of the Patent Term Adjustment indicated in the *Notice of Allowance* mailed on January 10, 2007 for the above-identified patent application. This application for Patent term adjustment is being filed with payment of the Issue Fee for this application.

Applicant respectfully submits that the correct patent term adjustment for the patent that issues from this application is 554 days, not 375 days as indicated on the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) that was mailed with the Notice of Allowance. Applicants' corrected PTA calculation is based in part upon the failure of the Patent and Trademark Office to mail a notification under 35 U.S.C. § 132 within 14 months of the filing date of the application. A complete calculation summary with the relevant dates and rules is submitted herewith as **PTA Calculation Exhibit 1**.

Appl. No. : **10/036,150**
Filed : **December 26, 2001**

§ 1.705(b)(1)

This Application for Patent Term Adjustment is accompanied by the \$200 fee as set forth in § 1.18(e). The fee is identified on the Transmittal Letter accompanying the payment of the Issue Fee and is included as part of the Issue Fee payment.

§ 1.705(b)(2)

As mentioned above and in accordance with 37 C.F.R. § 1.705(b)(2)(i), Applicants submit that the correct Patent Term Adjustment for this application is 554 days.

In accordance with 37 C.F.R. § 1.705(b)(2)(iii), Applicants state that no patent granted on this application is subject to a terminal disclaimer.

In accordance with 37 C.F.R. § 1.705(b)(2)(ii), Applicants are entitled to the following adjustments (credits):

- *§ 1.703(a)(1)/14-Month PTO first Action:* The application was filed on December 26, 2001. The first action was mailed by the PTO on September 9, 2004. Applicants are entitled to a **credit of 561 days**.

THE SUM OF THE ABOVE LISTED CREDIT DAYS IS: 561 DAYS

In accordance with 37 C.F.R. § 1.705(b)(2)(iv)(A), Applicants are subject to the following reductions (debits):

- *1.704(b)/3-Month Applicant Response to Notice or Action:* The PTO mailed a non-final Office Action on September 9, 2004. The PTO received Applicants' response on December 13, 2004. Applicants are subject to a **debit of 4 days**.
- *1.704(b)/3-Month Applicant Response to Notice or Action:* The PTO mailed a non-final Office Action on March 24, 2005. The PTO received Applicants' response on June 27, 2005. Applicants are subject to a **debit of 3 days**.

Appl. No. : 10/036,150
Filed : December 26, 2001

THE SUM OF THE ABOVE LISTED REDUCTIONS IS: 7 DAYS

In accordance with 37 C.F.R. § 1.705(b)(2)(iv)(B), Applicants state that there are no other circumstances constituting a failure to engage in reasonable efforts.

Based upon the above information, Applicants submit that the following is the correct Patent Term Adjustment:

	Reductions	Credits
Total Reductions and Credit Days	7	561
Net Patent Term Adjustment Days (310-38)		554

Conclusion

Applicants request reconsideration of the patent term adjustment sent with the Notice of Allowance. For the reasons discussed above, the correct Patent Term Adjustment is 554 days, and not 375 days as determined by the PTO.

Please direct any question regarding this request to the undersigned attorney of record at the office telephone number set forth below.

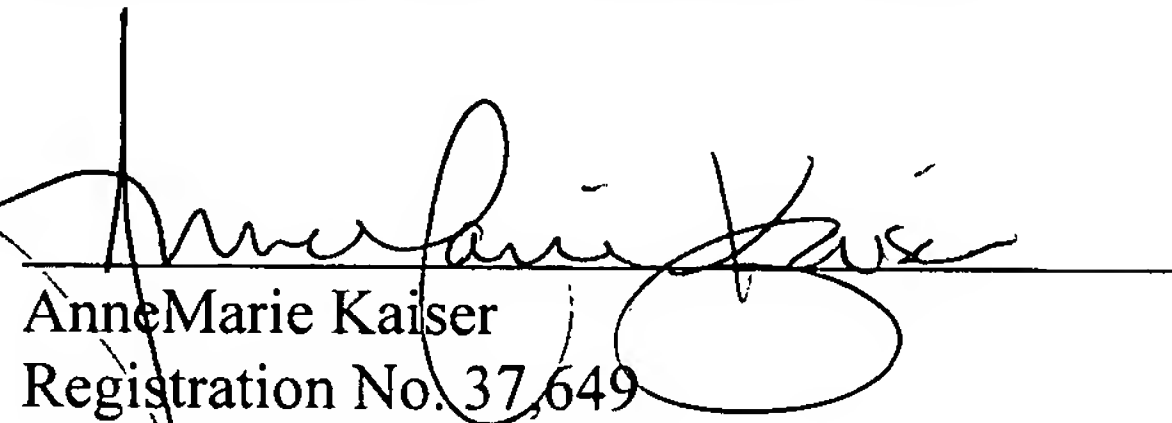
The undersigned authorizes the Commissioner to charge any additional fees required by this paper or to credit any overpayment to Deposit Account No. 11-1410.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated:

April 9, 2007

By:


AnneMarie Kaiser
Registration No. 37,649
Attorney of Record
Customer No. 30,313
619-235-8550

PTA Calculation Exhibit1 (1/3)

RULE APPLICATION SUMMARY (3)						
Event	Rule Invoked	Related Event	Excluded Days	Debit Days	Credit Days	
A 12/26/2001 Filing Date under 35 USC 111(a) (US National Application)	14-Month PTO First Action PTO must mail a notification under 35 USC 132 or a notice of allowance under 35 USC 151 not later than 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 in an international application. Period of adjustment (credits) begins on the day after the date that is 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 and ending on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(i); 37 CFR 1.702(a)(1), 1.703(a)(1).	<i>First PTO Action:</i> 09/09/2004 Non-final Action	0	0	561	
B 12/26/2001 Filing Date under 35 USC 111(a) (US National Application)	3-Year PTO Issue of Patent PTO must issue a patent within 3 years (not including excursions) after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application. Period of adjustment (credits) begins on the day after the date that is 3 years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the listed extension periods. 35 USC 154(b)(1)(B); 37 CFR 1.702(b), 1.703(b).	<i>Issue Date:</i> None Assigned	Not Analyzed (3)			
C 09/09/2004 Non-final Action	2-Month Applicant Response to Notice or Action Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made.	<i>Applicant Response:</i> 12/13/2004 Reply after Non-final Action under 37 CFR 1.111	0	4	0	
D 12/13/2004 Reply after Non-final Action under 37 CFR 1.111	4-Month PTO Response to Applicant Reply PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2), (3).	<i>PTO Response:</i> 03/24/2005 Final Rejection	0	0	0	

PTA Calculation Exhibit1 (2/3)

RULE APPLICATION SUMMARY (G)						
Event	Rule Invoked	Related Event	Excluded Days	Debit Days	Credit Days	
A 12/26/2001 Filing Date under 35 USC 111(a) (US National Application)	14-Month PTO First Action PTO must mail a notification under 35 USC 132 or a notice of allowance under 35 USC 151 not later than 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 in an international application. Period of adjustment (credits) begins on the day after the date that is 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 and ending on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(i); 37 CFR 1.702(a)(1), 1.703(a)(1).	<i>First PTO Action:</i> 09/09/2004 Non-final Action	0	0	561	
B 12/26/2001 Filing Date under 35 USC 111(a) (US National Application)	3-Year PTO Issue of Patent PTO must issue a patent within 3 years (not including excursions) after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application. Period of adjustment (credits) begins on the day after the date that is 3 years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the listed extension periods. 35 USC 154(b)(1)(B); 37 CFR 1.702(b); 1.703(b).	<i>Issue Date:</i> None Assigned	Not Analyzed (3)			
C 09/09/2004 Non-final Action	2-Month Applicant Response to Notice or Action Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(i); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made.	<i>Applicant Response:</i> 12/15/2004 Reply after Non-final Action under 37 CFR 1.111	0	4	0	
D 12/15/2004 Reply after Non-final Action under 37 CFR 1.111	4-Month PTO Response to Applicant Reply PTO must respond to a reply under 35 USC 152 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2)(3).	<i>PTO Response:</i> 03/24/2005 Final Rejection	0	0	0	

PTA Calculation Exhibit1 (3/3)

I	12/09/2005 Reply after Non-final Action under 37 CFR 1.111	<u>4-Month PTO Response to Applicant Reply</u> PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)-(X)(ii); 37 CFR 1.702(a)(2); 1.703(a)(2)(3).	PTO Response: 03/02/2006 Final Rejection	0	0	0
J	03/02/2006 Final Rejection	<u>3-Month Applicant Response to Notice or Action</u> Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).	Applicant Response: None Assigned		Not Analyzed (3)	
K	01/10/2007 Notice of Allowance under 35 USC 151	<u>3-Month Applicant Response to Notice or Action</u> Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).	Applicant Response: None Assigned		Not Analyzed (3)	
L	04/10/2007 Issue Fee Payment under 35 USC 151	<u>4-Month PTO Issue of Patent</u> PTO must issue a patent not later than 4 months after the date on which the issue fee was paid under 35 USC 151 and all outstanding requirements were satisfied. The period of adjustment (credits) begins on the day after the date that is 4 months after the date the issue fee was paid and all outstanding requirements were satisfied and ends on the day the patent issues. 35 USC 154(b)(1)-(A)(iv); 37 CFR 1.702(a)(4); 1.705(a)(6).	Issue Date: None Assigned		Not Analyzed (3)	
Total Exclusion, Debit, and Credit Days				0	7	561
Overlap Days				0	0	0
Net Exclusion, Debit, and Credit Days				0	7	561†